IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

WP(C).No. 20863 of 2007(H)

PETITIONER:

SPL INFRASTRUCTURE PVT. LTD.,
ENGINEERING CONTRACTORS, R.O.NO.24, IST FLOOR,
CRESCENT PART STREET, T.NAGAR, CHENNAI-600 017
THROUGH ITS AUTHORISED REPRESENTATIVE,ABDUL FAIZY.

BY ADV. SRI.RAJIV ABRAHAM GEORGE
SRI.EAPEN ABRAHAM GEORGE

RESPONDENTS:
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1. **THE STATE OF KERALA,**
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
PUBLIC WORKS DEPARTMENT, GOVERNMENT SECRETARIAT,
TRIVANDRUM.

2. **THE CHIEF EGINEER,**
PWD - NATIONAL HIGHWAYS, PUBLIC OFFICE BUILDING,
OPPOSITE MUSEUM, TRIVANDRUM.

3. **THE SUPERINTENDING ENGINEER,**
PWD, N.H. CENTRAL CIRCLE, VYTTILA, KOCHI-682 019.

ADDL. 4TH RESPONDENT IMPLEADED

4. **E.K.K.MUHAMMAD, ENJAKUDY HOUSE,**
OKKAL P.O., PERUMBAVOOR IS IMPLEADED AS ADDL. 4TH
RESPONDENT AS PER ORDER DT. 24.7.07 IN IA. 9876/07.

BY ADV. SRI.S.VINOD BHAT
GOVERNMENT PLEADER SRI.I.V.PRAMOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/09/2007, THE COURT ON 26/09/2007 DELIVERED THE FOLLOWING:

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W.P.(C) NO. 20863/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE TENDER NOTICE NO.1 D1.14/2004.

EXT.P2:- COPY OF THE LETTER DT. 1.6.07 FROM THE 3RD RESPONDENT TO THE PETITIONER.

EXT.P3:- COPY OF THE LETTER DT. 5.6.07 FROM THE PETITIONER TO THE RESPONDENTS.

EXT.P4:- COPY OF THE LETTER DT. 7.6.07 FROM THE 3RD RESPONDENT TO THE PETITIONER.

EXT.P5:- COPY OF THE LETTER DT. 12.6.07 FROM THE PETITIONER TO THE 3RD RESPONDENT WITH COPY TO 2ND RESPONDENT.

EXT.P6:- COPY OF THE RELEVANT PORTION OF THE STANDARD BIDDING DOCUMENT OF THE MINISTRY OF SURFACE TRANSPORT.

EXT.P7:- COPY OF THE ADVOCATES' NOTICE DT. 2.7.07 TO THE 3RD RESPONDENT AND OTHERS AND OTHERS ALONGWITH POSTAL RECEIPTS.

EXT.P8:- COPY OF THE STANDARD CONDITIONS OF CONTRACT OF THE TAMIL NADU ROAD SECTOR PROJECT.

EXT.R3(a):- COPY OF THE CERTIFICATE ISSUED BY THE DIVISIONAL ENGINEER, THIRUVARUR DT. 13.7.06.

EXT.R3(b):- COPY OF THE CONFIRMATION LETTER FOR THE WORK EXPERIENCE CERTIFICATE FURNISHED BY SRI.E.K.K. MUHAMMED DT. 11.4.07.

E.XT.R3(c):- COPY OF THE LETTER SENT BY THE CHIEF ENGINEER DT. 19.6.07.

EXT.R3(d):- COPY OF THE AGREEMENT DT. 1.9.04.

EXT.R2(d):- COPY OF THE AGREEMENT DT. 17.3.04.

EXT.R3(f):- COPY OF THE SPECIAL POWER OF ATTORNEY EXECUTED BY THE C.M.D. OF AMAR CONSTRUCTIONS DT. 31.12.03.

EXT.R3(g):- COPY OF THE LETTER DT. 7.4.05.

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EXT.R3(g)1:- COPY OF THE LETTER DT. 7.4.06.

EXT.R4(a):- COPY OF THE LETTER NO.E2.1174/06 DT. 7.6.07 FROM SUPERINTENDING ENGINEER , NH CENTRAL CIRCLE, KOCHI VYTTILA.

EXT.R4(b):- COPY OF THE LETTER DT. 12.6.07 ISSUED BY THE 4TH RESPONDENT TO SUPERINTENDING ENGINEER , NH CENTRAL CIRCLE , KOCHI VYTTILA.

EXT.R4(c):- COPY OF THE LETTER NO.E2.1174/06 DT. 4.7.07 FROM SUPERINTENDING ENGINEER , NH CENTRAL CIRCLE, KOCHI , VYTTILA.

EXT.R4(d):- COPY OF THE LETTER NO.E2.1174/06 DT. 11.7.07 FROM SUPERINTENDING ENGINEER , NH CENTRAL CIRCLE, KOCHI, VYTTILA

/TRUE COPY/

P.A. TO JUDGE

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ANTONY DOMINIC, J.

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W.P.(C) No. 20863 OF 2007 H
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Dated this the 26th September, 2007

J U D G M E N T

The question that arises for consideration is whether the decision of respondents 1 to 3 to pre-qualify the additional 4th respondent for the work tendered by Ext.P1 is legal or not?

2. The 3rd respondent issued Ext.P1 Notice Inviting Tender for the work of Widening and Strengthening of the straight road from Vadakkanchery - Mangalam Junction to Govindapuram under Inter-State Connectivity Scheme. The tender was invited in two sealed covers, one for technical offer and the other for financial offer. To pre-qualify for the award of contract, the tenderer will have to satisfy the criteria laid down in that behalf. Among others, it was specified that the bidder should have completed work of the nature specified as a prime contractor or as a nominated sub contractor. Tender was submitted by the petitioner and Chief Engineer's Tender Committee evaluated the technical bids on 13.03.2007 and thereafter Ext.P2 was issued to the pre-qualified tenderers requiring them to attend the office of the 3rd respondent on 04.06.2007 for opening the financial bid. Petitioner attended the price bid opening when it was found that the price bid submitted by the additional 4th respondent was the

lowest.

3. Petitioner came to know that the additional 4th respondent obtained prequalification based on a false certificate issued by the Divisional Engineer, Tamil Nadu Road Sector Project, Highways Department, Government of Tamil Nadu. Therefore, petitioner addressed respondents 1 to 3 by Ext.P3 letter stating that the certificate furnished by the additional 4th respondent was in respect of a work executed and completed by M/s. Amar Construction Company and not the additional 4th respondent. On this basis, the respondents were requested to verify the correctness of the claim of the 4th respondent from the Tamil Nadu authorities. Response came from the 3rd respondent by Ext.P4 that the Tamil Nadu authority had confirmed the certificate issued by him and requested the petitioner to sent any reliable proof/documents which may expose the falsehood suspected by it. However, the 3rd respondent stated that they were checking up the matter with the authorities based on the information from the petitioner. The petitioner replied by Ext.P5 stating that it will take time to obtain documents and requested that the veracity of the claim may be verified from the Project Director of the Tamil Nadu State. In spite of all these, since the petitioner apprehended that the work was going to awarded to the 4th respondent, Ext.P4 lawyer notice was issued to the respondents and thereafter this writ petition was filed praying for quashing the prequalification of the 4th respondent and requiring them not to issue selection notice to him for the work. Petitioner

also sought a declaration that he was the lowest tenderer.

4. Respondents 3 and 4 have filed counter affidavits. The 3rd respondent would state that Ext.R3(a) certificate was issued by the Divisional Engineer, Highways of the Tamil Nadu government to the effect that the 4th respondent had executed the work of "*Enhanced Periodical Maintenance Of Government Roads in Nagapatinam and Thiruvarur Districts of Tamil Nadu Package No.MC-4(a) Tharangambady-Myladumthurai Road km.11/2 to Km. 28/6 (b) Tanjavur – Mannargudy – Tiruthuraipoondi – Vadaranyam – Kodiyakkarai Road Km.15/7 to Km. 30/6 (c) Nagore – Vettar Road KM.15/0 to Km.23/0 Agreement No.13/2004-2005 dated 1.9.2004" Total value of the work was Rs.1849.00 lakhs. The stipulated dated of completion of the work was 30.4.2006. The actual completion of work was 13.4.2006.*" Soon after the prequalification of the tenderers, a complaint was received and letters were issued to the officers who had issued experience certificates to confirm the same. According to the 3rd respondent in respect of the additional 4th respondent Ext.R3(b) confirmation letter was received. It is stated that it was thereafter that price bids were opened on 04.06.2007 when the 4th respondent's offer of Rs.11.68 crores was found to be the lowest, and the offer of the petitioner was for Rs.12.91 crores. It is submitted that by accepting the bid submitted by the 4th respondent, the respondents were saving1.23 crores for exchequer.

5. The counter affidavit further proceeds to state that on

receipt of Ext.P3 from the petitioner, a letter was sent to the Project Director for confirmation of the contents of the certificate produced by the 4th respondent and that in reply Ext.R3(c) was received clarifying that;

> "*the contractor for the contract MC-4, M/s. Amar Constructions Company has given power of attorney to E.K.K. Muhammed, Kerala to act for and on behalf of the company. This is purely an internal arrangement made between the contractor and the Power of Attorney Holder. The work was carried out by the power of Attorney holder on behalf of the contractor*".

6. It is also stated that in reply to the explanation sought from the 4th respondent he had produced Ext.R3(d) agreement between him and the Project Director, Tamil Nadu Road Sector Project, in his capacity as Power of Attorney Holder of Amar Constructions, Ext.R3(e) agreement between the 4th respondent and Amar Constructions, Ext. R3(f) Special Power of Attorney executed by the CMD of Amar Constructions in favour of the 4th respondent and Ext.R3(g) and Ext.R3(g)(1) TDS Certificates. Based on these documents, it is averred that the Chief Engineer analysed the complaint of the petitioner and was convinced that the 4th respondent had executed all aspects of the work and that the experience certificate produced by him is genuine. It is stated that the Chief Engineer approved the lowest bid submitted by the 4th respondent on 20.06.2007 and issued selection notice to him on 04.07.2007 asking him to execute the agreement.

7. The 4th respondent in his counter affidavit swears by his eligibility to be pre-qualified. He submits that by Ext.R4(a)

clarification was sought and that was furnished by Ext.R4(b) to which Exts.R3(d), (e), (f) and (g) were enclosed. In paragraph 9 of the affidavit he submits that as power of attorney holder of Amar Constructions Company he signed agreement with Tamil Nadu authorities and that the said work was executed by him as a sub contractor of Amar Construction Company and that it was therefore that Ext.R3(a) experience certificate was issued to him for the aforesaid work. He has also produced Exts.R4(c) and (d) letters of the 3rd respondent informing acceptance of the tender and requiring him to execute the agreement. Like the 3rd respondent, the 4th respondent also would plead that the decision making process is not invalid on any grounds and that public interest deserves acceptance of his tender in as much as the offer made by him was the lowest and since the work is to be executed on a time bound basis or else the financial grant from the Central Government itself would lapse.

8. The petitioner has filed a reply affidavit contradicting each of the contentions in the counter affidavits and producing Ext.P8, the standard conditions of contract of Tamil Nadu Road Sector Project in terms of which a contractor could subcontract only with the approval of the Engineer and that the whole of the works could not be subcontracted. He would reiterate his contentions that the 4th respondent did not satisfy the conditions in Ext.P1 Notice Inviting Tender and therefore, he could not have been pre-qualified.

9. During arguments the counsel for the writ petitioner

contended that the 4th respondent was not eligible to be pre-qualified. On the other hand the learned Government Pleader who appeared on behalf of respondents 1 to 3 and the Learned the Senior Counsel appearing for the 4th respondent submitted that the 4th respondent satisfied the tender conditions and therefore the decision to pre-qualify him did not call for interference. It was also submitted that the court was concerned only with the decision making process and not with the decision itself. According to the counsel on the materials available before it, the tender committee has arrived at the decision which was not vitiated by arbitrariness, malafides or illegalities. According to them this court was not sitting in appeal over the decision of the tender committee and that public interest will suffer if the tender submitted by the 4th respondent is rejected and that a decision could be interfered with only if public interest warrants it and not on the making of a legal point.

10. From the pleadings in this case and the arguments that were raised on either side, the only issue that arises is whether the decision of the tender committee to pre-qualify the 4th respondent is one calling for interference under Article 226 of the Constitution of India.

11. Before proceeding further, clause 1.9 c of Ext.P1 Notice Inviting Tender needs to be seen and is extracted below:

> "Each bidder in the last 5 years should have satisfactorily completed (not less than 90% of contract value) as a prime contractor (or as a nominated sub contractor where the sub contract involve execution of all main items of

> work described in the bid document, provided further that all other qualification criteria are satisfied) at least one similar work of value not less than amount indicated in 1.7 (usually not less than 50% of estimated value of contract). The contractor should set up quality control lab at the site before starting the work, as per direction of the Department offices".

A perusal of the aforesaid clause of Ext.P1 would show that the tenderer should have executed the work of the prescribed volume as a prime contractor or as a nominated sub contractor where the sub contract involved execution of all main items of work described in the bid document.

12. In this case the 4th respondent's claim is that he has executed the work as a sub contractor of M/s. Amar Constructions and it is accepting this claim that he was pre-qualified by respondents 1 to 3. The question is whether on the material available before them whether respondents 1 to 3 were justified in arriving at such a decision.

13. Ext.P8 is the Standard Conditions of Contract of the Tamil Nadu Road Sector Project. Sub contractor has been defined as a person or a corporate body who has a contract with the contractor to carry out a part of the work in the contract. Clause 7.1 provides that the Contractor may sub contract with the approval of the Engineer and that sub contracting does not alter the contractor's obligation. Clause 7.2 provides that consent of the employer for sub contracting any part of the work shall not be required if the sub contractor is named in the contract and that the contractor shall not sub contract whole of

the works and that no part of the work can be sub contracted without the prior consent of the Engineer.

14. At the time when the 4th respondent was pre-qualified the only material that was produced by him was Ext.R3(a) certificate issued by the Divisional Engineer. It is the specific contention of the petitioner in paragraph 7 of the writ petition that he had come to know that the 4th respondent had obtained pre-qualification based on a false certificate issued by the Divisional Engineer, Tamil Nadu Road Sector Project and this certificate is Ext.R3(a). The same authority has, responding to the query of the 3rd respondent issued Ext.R3(b) confirming Ext.R3(a). However, the Chief Engineer (Works) responded to letters dated 04.02.2007 and 18.06.2007 issued by the 3rd respondent, and clarified in Ext.R3(c) that the contractor for the work was Amar Construction Company and that the 4th respondent acted for and on their behalf. According to the Chief Engineer this was purely an internal arrangement between the Contractor and the Power of Attorney Holder. Thus Ext.R3(c) does not recognize 4th respondent as a sub contractor of Amar Construction Company and therefore with the receipt of Ext.R3 (c), the story of subcontract canvassed by the 4th respondent stood exposed.

15. To maintain his stand that he was the sub contractor, the 4th respondent also supplied materials and these are Exts.R3 (d), R3(e), R3(f) and R3(g). Ext.R3(d) is the agreement between the Project Director, Tamil Nadu Road Sector Project and Amar

Construction Company which is signed by the 4th respondent "**for and on behalf of the contractor**". Ext.R3(g) is an agreement dated 17th March 2004 between Amar Construction Company and the 4th respondent purporting to agree to sub let PWD or National Highway works in Tamil Nadu State to the 4th respondent in case these works are awarded to them. This provides that the works shall be transferred to the sub contractor on a back to back basis and that the agreement shall be in force upto the execution and completion of such work. This agreement does not evidence transfer of any work to the sub contractor and nothing has been placed on record to prove that there in fact has been any such transfer of work.

16. That apart, since Ext.P8 tender conditions required consent of the Engineer for sub contracting and that the whole work could not be sub contracted, I am not persuaded to accept Ext.R3(e) on its face value and conclude on the basis of this alone that the 4th respondent was in fact a sub contractor of the whole work. If 4th respondent was in fact a sub contractor I am at a loss to understand why the Chief Engineer has not mentioned the same in Ext.R3(c) issued by him.

17. Ext.R3(f) is the special power of attorney that is relied on by the 4th respondent. I have carefully gone through the power of attorney which authorized the 4th respondent to do everything to process application, apply for tender, attend offices, enter into correspondence, sign documents, to encash/revoke bank guarantees on behalf of the principal. Even accepting the

Power of Attorney as such, it is plainly clear that this did not authorize the 4th respondent to execute the work awarded to his principals and this fact has been fairly conceded by the Senior Counsel for the 4th respondent also.

18. The only other document is Ext.R3(g), TDS Certificates which show M/s. Amarshiv Construction Pvt. Ltd., as the person deducting the tax. Even going by Ext.R3(e) and (f) sub contract agreement and the Power of Attorney, the 4th respondent had acted on behalf of Amar Constructions Company, a company registered under the Companies Act 1956, which is described as a division of Amarshiv Construction Pvt. Ltd. If his principal was M/s. Amar Construction Company, it is not understandable as to how M/s. Amarshiv Construction Pvt. Ltd., could deduct income tax at source. There is absolutely no explanation forthcoming in this respect.

19. Thus, none of these documents would support the claim of the 4th respondent that he was a sub contractor of M/s. Amar Construction Company to claim the experience prescribed in the tender conditions entitling him to be pre-qualified on that basis. At best the 4th respondent was, only a power of attorney holder of Amar Constructions Company.

20. Despite this plain ineligibility of the 4th respondent, Respondents 1 to 3 have accepted his eligibility blindly acting upon Ext.R3(a), which is contradicted by Ext.R3(c) issued by the Chief Engineer and their decision cannot be supported. Therefore I hold that the decision pre-qualifying the 4th

respondent is plainly arbitrary and illegal.

21. The further question that I should deal with is the contention of the respondents that sitting in Article 226 and exercising the power of judicial review, it is beyond my jurisdiction to evaluate the correctness of the decision of the respondents. I am fully conscious of the limitations of this court which has been highlighted in the various decision of this Court as also the apex court. In fact the decision of the apex court in **M/s.G.J. Fernandez v. State of Karnataka (AIR 1990 SC 958), Directorate of Education v. Educomp Datamatics Ltd. (AIR 2004 SC 1962) and Master Marine Services (P) Ltd., v. Metcalfe & Hodgkinson (P) Ltd. (2005 (6) SCC 138)** were relied on by the learned Government Pleader while **Raunaq International Ltd. v. I.V.R. Construction Ltd., and Others (1999 (1) SCC 492)** was relied on by the Senior Counsel for the 4th respondent.

22. In G.J Fernandez's case, the Apex Court held that assessment of comparative merit between the appellant therein and its competitor was a matter for the authority and not for the courts to decide. However, in paragraph 12 of the same judgment the apex court has quoted with approval the following paragraphs from its judgment in **Ramana Dayaram Shetty Vs. The International Airport Authority of India (AIR 1979 SC 1628).**

> "It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged

and it must scrupulously observe those standards on pain of invalidation of an Act in violation of them. This rule was enunciated by Mr.Justice Frankfurter in Vitarelli v. Seaton (1959) 359 US 535 : 3 Law Ed (Second series) 1012, where the learned Judge said:

"An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

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It is, therefore, obvious that both having regard to the constitutional mandate of Art.14 as also the judicially evolved rule of administrative law, the 1st respondent was not entitled to act arbitrarily in accepting the tender of the 4th respondent but was bound to conform to the standard or norm laid down in para 1 of the notice inviting tenders which required that only a person running a registered IInd class hotel or restaurant and having at least 5 years' experience as such should be eligible to tender. It was not the contention of the appellant that this standard or norm prescribed by the 1st respondent was discriminatory having no just or reasonable relation to the object of inviting tenders namely, to award the contract to a sufficiently experienced person who would be able to run efficiently a IInd class restaurant at the airport. Admittedly the standard or norm was reasonable and non-discriminatory and once such a standard or norm for running IInd class restaurant should be awarded was laid down, the 1st respondent was not entitled to depart from it and to award the contract to the 4th respondents who did not satisfy the condition of eligibility prescribed

> by the standard or norm. if there was no acceptable tender from a person who satisfied the condition of eligibility, the 1st respondent could have rejected the tenders and invited fresh tenders on the basis of a less stringent standard or norm, but it could not depart from the standard or norm prescribed by it and arbitrarily accept the tender of the 4th respondents".

The judgment in the case of Directorate of Education and Others was in a writ petition filed aggrieved by a clause in the notice inviting tender. It is in that context, referring to the judgment in **Tata Cellular Vs. Union of India (1994 (6) SCC 651), Air India Ltd., Vs. Cochin International Airport Ltd. (2000 (2) SCC 617) and Monarch Infrastructure (P) Ltd. Vs. Commissioner Ullhasnagar Municipal Corporation and Others (2000 (5) SCC 287)**, the court held that the terms of invitation to tender are not open to judicial scrutiny, the same being in the realm of contract.

23. In this case, it is not the validity of Ext.P1 which is under challenge but the issue is whether the 4th respondent has satisfied the terms of the notice inviting tender. Therefore, this judgment also is of no assistance to the respondents.

24. In Master Marine Services Pvt. Ltd., on the facts of the case, the court found that the appellant satisfied the tender conditions and on that basis allowed the appeal. In so far as the judgment in the case of Runaq International is concerned, that arose in the context of an interim order passed by the Bombay High Court. In paragraph 15 of the judgment itself, it has been held that "*where the decision making process has been*

structured and the tender conditions set out the requirements, the court is entitled to examine whether these requirements have been considered". Thus, even this judgment does not in any manner restrict the power of the court in examining whether the authorities correctly assigned with the tender conditions have been satisfied. In its judgment in ***Puravankara Projects Ltd.*** v. ***Hotel Venus International*** {2007(2) KLT 943(SC)} the Apex Court reversed the judgment of this Court, in view of terms of the Notice Inviting Tender.

25. To my understanding, once tender conditions are specified in the Notice Inviting Tender, the authorities are bound to ensure compliance thereof. Relaxation is possible if a right in that behalf is reserved in the notice itself and is exercised for bonafide reasons. In this case nobody has a case that any tender condition has been relaxed in favour of the 4th respondent. In this context I should refer to the apex court judgment in the case of Monarch Infrastructure (P) Ltd., where the court has approved the High Court judgment in the following terms:

> "*The High Court had taken the view that if a term of the tender having been deleted after the players entered into the arena it is like changing the rules of the game after it had began and therefore, if the Government or the Municipal Corporation was free to alter the conditions fresh process of tender was the only alternative permissible*".

26. The other contention that was raised mainly by the learned counsel for the 4th respondent was that interference is permissible only if public interest warrants it. I have already

found that the 4th respondent had produced Ext.R3(a) certificate which was confirmed by the Divisional Engineer in Ext.R3(b). It is the specific case of the petitioner that the 4th respondent had obtained a false certificate from the Divisional Engineer. This contention is corroborated by the Ext.R3(c) issued by the Chief Engineer. Further on a combined reading of Exts.R3(d) and R3(e) agreements, Ext.R3(f) special power of attorney and Ext.P8, I am in agreement with the learned counsel for the writ petitioner.

27. Thus, what the respondents want this court is that in spite of a finding as above, it should keep its hands off and accept the illegality committed by respondents 1 to 3. After producing a certificate like Exts.R3(a) and R3(b), the correctness of which stands belied by the other documents, I am not prepared to still uphold what has been done by respondents 1 to 3 for the only reason of public interest. In my view the 4th respondent cannot be allowed to take everyone for a ride and escape from its consequence taking refuge under public interest. Otherwise, this court will be rewarding the dishonest on the ground of public interest, for the only reason that his offer was the lowest. In this context I should refer to the Apex Court judgment in ***W.B. State Electricity Board*** v. ***Patel Engineering Co. Ltd. & Ors.*** {(2001) 2 SCC 451} where it has been held that:

> "The principle of awarding contract to the lowest tenderer applies when all things are equal. It

> is equally in public interest to adhere to the rules and conditions subject to which bids are invited. Merely because a bid is the lowest the requirements of compliance with the rules and conditions cannot be ignored. It is obvious that the bid of respondents 1 to 4 is the lowest of bids offered. As the bid documents of respondents 1 to 4 stand without correction there will be inherent inconsistency between the particulars given in the annexure and the total bid amount, it (sic they) cannot be directed to be considered along with the other bids on the sole ground of being the lowest."

28. Now that the certificate and his claim is found to be unacceptable, the decision taken by respondents 1 to 3 deserves to be interfered with. I should also mention that the learned counsel for the writ petitioner submitted that though the 4th respondent has been pre-qualified, till date work has not been commenced. It that be so, by excluding an ineligible person, public interest cannot suffer. If the rate quoted by the petitioner is not acceptable to the respondents, or the tenders are not acceptable to the respondents, the proper course is to resort to fresh tender.

29. In the result, this writ petition will stand allowed and the decision of respondents 1 to 3 approving the pre-qualification of the additional 4th respondent for the work tendered by Ext.P1 will stand quashed. Needless to say that all further proceedings

taken on the basis of such pre-qualification also will be stand quashed.

The writ petition is allowed on the above terms.

ANTONY DOMINIC
JUDGE

pr/jan.